

PUBLIC SANCTIONS
FY 2014

The following are public sanctions (reproduced in their entirety) which were issued by the Commission during fiscal year 2014. The public records for these cases are available for inspection at the Commission's offices located at 300 W. 15th Street, Suite 415, Austin, Texas.



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 13-0496-JP

PUBLIC REPRIMAND

**HONORABLE BOBBY R. NICHOLDS
JUSTICE OF THE PEACE, PRECINCT 3
TRINITY, TRINITY COUNTY, TEXAS**

During its meeting on August 14-16, 2013, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Bobby R. Nicholds, Justice of the Peace, Precinct 3, Trinity, Trinity County, Texas. Judge Nicholds was advised by letter of the Commission's concerns and provided a written response. After considering the evidence before it, the Commission entered the following Findings and Conclusions.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Bobby R. Nicholds was Justice of the Peace, Precinct 3, Trinity, Trinity County, Texas.
2. On or about February 5, 2013, Judge Nicholds' close personal friend ("L.D.") was arrested for Driving While Intoxicated.
3. On or about February 6, 2013, another justice of the peace was preparing to magistrate L.D. when Judge Nicholds approached him in his office, in the presence of court staff, and asked if he could conduct her magistration instead.
4. Judge Nicholds thereafter magistrated L.D. and set a Personal Recognizance ("PR") bond for her release.
5. Judge Nicholds explained that he did so because he knew that L.D. would "not run."
6. Judge Nicholds acknowledged that he had been dating L.D. at the time that he magistrated her and set her PR bond.

7. In December of 2011, the Commission issued a Public Admonition to Judge Nicholds for lending the prestige of his judicial office in an attempt to assist L.D.'s daughter with a pending criminal matter, in violation of Canon 2B of the Texas Code of Judicial Conduct.
8. Judge Nicholds advised the Commission that he intends to retire from the bench in 2014, and does not intend to run for public office in the future.

RELEVANT STANDARD

Canon 2B of the Texas Code of Judicial Conduct states, in pertinent part, that, "A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge."

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Nicholds violated Canon 2B of the Texas Code of Judicial Conduct when he magistrated someone with whom he had a romantic relationship, allowed her to be released on a PR bond, and did so knowing that another judge who did not have a conflict of interest was willing and available to conduct the magistration. Although Judge Nicholds had the legal authority to magistrate a defendant charged with Driving While Intoxicated, and the discretion to release that defendant on a PR bond, his intervention in this particular case, which involved his girlfriend, created the appearance and the reality that he was allowing his relationship with her to influence his judicial conduct and judgment, that he was giving her favorable treatment, and that she was in a special position to influence the judge. The fact that Judge Nicholds has previously been disciplined for engaging in the same or similar conduct in aid of his girlfriend was an aggravating factor in determining the level of discipline in this case and demonstrates that his actions in this instance were both willful and persistent violations of Canon 2B of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canon 2B of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable Bobby R. Nicholds, Justice of the Peace, Trinity, Trinity County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 17th day of September, 2013.

ORIGINAL SIGNED BY

Tom Cunningham, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 12-0849-DI

PUBLIC ADMONITION

**HONORABLE JUERGEN (SKIPPER) KOETTER
267TH JUDICIAL DISTRICT COURT
VICTORIA, VICTORIA COUNTY, TEXAS**

During its meeting on August 14-16, 2013, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Juergen (Skipper) Koetter, Judge of the 267th Judicial District Court, Victoria, Victoria County, Texas. Judge Koetter was advised by letter of the Commission's concerns and provided a written response. After considering the evidence before it, the Commission entered the following Findings and Conclusions.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Juergen (Skipper) Koetter was Judge of the 267th Judicial District Court in Victoria, Victoria County, Texas.
2. On June 16, 2006, attorney O.F. Jones ("Jones") filed a lawsuit against his former client, Richard Whatley ("Whatley"), to recover attorney's fees owed in connection with Jones's representation of Whatley in a prior case filed in Medina County.
3. On February 2, 2009, a bench trial was held before Judge Koetter, who issued a take nothing judgment on April 13, 2009. Jones appealed the trial court's judgment.
4. On June 9, 2011, the Thirteenth Court of Appeals reversed and remanded the case, ordering the trial court to determine what, if any, attorney's fees were owed to Jones by Whatley.
5. On October 13, 2011, the parties appeared before Judge Koetter, who announced that he was awarding Jones more than \$40,000 in attorney's fees.

6. Although Jones put on no evidence, Whatley was allowed to briefly testify. As a result, Judge Koetter reduced the attorney fee award to \$26,694. Whatley filed a Motion for New Trial, but later withdrew that motion.
7. At a hearing held on November 22, 2011, Whatley urged his Motion to Withdraw the Motion for New Trial and offered to pay the \$26,694 ordered by the court.
8. Jones informed the court that he wanted a new trial because he believed he was entitled to more money from Whatley.
9. Judge Koetter indicated that he would grant a new trial and set the case for trial on its merits on January 18, 2012. Due to scheduling conflicts, the case was not heard on January 18, 2012.
10. On January 13, 2012, Judge Koetter signed an Agreed Order granting the Motion for New Trial, and vacating the October 13th Judgment.
11. On that same day, Jones sent a letter to Whatley's attorney, Jerry L. Clark ("Clark"), revealing a meeting with Judge Koetter at the courthouse during which the subject of mediating the dispute was discussed *ex parte*.
12. In his letter, Jones wrote,

"Judge Koetter told me to tell you that perhaps we need to consider mediation again. I told him that we had tried that once, and were not successful because Mr. Whatley was not amenable to reason, according to Bob Houston. He told me to tell you that he was inclined to sign a judgment that would provide me with a larger amount than he had previously, and that you should talk with Mr. Whatley to see if you thought that going back to Bob Houston for another couple of hours would be of any benefit or value."
13. In a letter to Jones dated February 2, 2012, Clark objected to the *ex parte* communication between Jones and Judge Koetter, and requested a meeting with Judge Koetter before the matter was set for trial.
14. In a letter to Clark dated February 2, 2012, Jones responded to Clark's objection about his *ex parte* meeting with Judge Koetter as follows:

"Next, as you know, I took the Order granting the New Trial over to the courthouse and found Judge Koetter and got him to sign the order. After he signed it, he said to me what I recited in my letter to you. In a sense it was an *ex parte* discussion, although it was in open court. Again, I merely passed on to you what was said, and in the instance what I was told. I am sure that you are familiar with Judge Koetter and his approach to matters before him as I am, and I am sure that you can explain his proclivities to the Whatley's [sic] as well as anyone."
15. On February 3, 2012, Jones notified Clark that Judge Koetter had signed a judgment awarding Jones \$45,000 in attorney's fees.
16. The \$45,000 judgment erroneously indicated that the parties appeared for a hearing on January 18, 2012, and that the judgment was signed on January 2, 2012.
17. On February 8, 2012, Judge Koetter signed a Judgment Nunc Pro Tunc correcting the errors in the judgment.
18. Whatley appealed the new judgment.

19. On May 23, 2013, the Thirteenth Court of Appeals reversed and remanded the case back to the trial court for a new trial. In its opinion, the Court found that Judge Koetter had no authority to enter the \$45,000 judgment without affording Whatley the right to be heard.
20. In his written responses to the Commission's inquiry, Judge Koetter acknowledged having the *ex parte* conversations with Jones.
21. Judge Koetter stated that he had suggested to Jones that the parties "needed to consider mediation again," but, according to the judge, this was merely a "passing remark" given the case history and the number of hearings in the case.
22. Judge Koetter further explained that the \$45,000 judgment was based on his opinion and the evidence that had been presented by the parties, who had been asked to submit briefs and any additional evidence they wanted the court to consider when addressing their respective positions on the attorney's fees question.
23. Judge Koetter advised the Commission that he had decided against conducting any further hearings in the case based on his impression and belief that neither party had new evidence to offer.

RELEVANT STANDARD

Canon 3B(8) of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian ad litem, an alternative dispute resolution neutral or any other court appointee concerning the merits of a pending or impending judicial proceeding."

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Koetter engaged in an improper *ex parte* communication with Jones concerning a contested issue in a pending case, which resulted in the entry of a judgment in favor of Jones without affording Whatley the right to be heard. In reaching its decision, the Commission took into account the fact that Judge Koetter had been sanctioned previously for engaging in similar conduct. In this case, the Commission concludes that Judge Koetter's conduct, as described herein, constituted a willful or persistent violation of Canon 3B(8) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canon 3B(8) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Juergen (Skipper) Koetter, Judge of the 267th Judicial District Court, Victoria, Victoria County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 17th day of September, 2013.

ORIGINAL SIGNED BY

Tom Cunningham, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 11-0471-DI

PUBLIC WARNING

**HONORABLE MARISELA SALDANA
FORMER JUDGE, 148TH JUDICIAL DISTRICT COURT
CORPUS CHRISTI, NUECES COUNTY, TEXAS**

During its meeting on October 16-18, 2013, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Marisela Saldana, Former Judge of the 148th Judicial District Court in Corpus Christi, Nueces County, Texas. Judge Saldana was advised by letter of the Commission's concerns and provided a written response. Judge Saldana appeared with counsel before the Commission on October 17, 2013, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Marisela Saldana was Judge of the 148th Judicial District in Corpus Christi, Nueces County, Texas.¹
2. On November 8, 2010, Complainant filed a petition to modify the parent-child relationship and obtained a Temporary Restraining Order (TRO) against his child's mother after his son made an outcry that the mother's boyfriend had spanked the child with a belt, leaving bruises on the child.
3. On November 18, 2010, the matter went before Judge Saldana to determine if the TRO would remain in effect. On that day, Judge Saldana dissolved the TRO and granted temporary orders that required the parties to avoid corporal punishment

¹ Judge Saldana lost the November 2010 general election and left office on December 31, 2010.

and to attend counseling. The judge also set a compliance hearing for December 2, 2010.

4. At the December 2nd compliance hearing, after some off-the-record discussions held in chambers, Judge Saldana went on the record to counsel the parties about the importance of complying with her orders and attending counseling. She also set the matter for final hearing on December 20, 2010.
5. At the December 2nd hearing, an Investigator for the Department of Family and Protective Services (DFPS), who had just been assigned to the case that day, expressed concerns about the date of the final hearing by advising the judge that DFPS investigations normally take 30-45 days to complete, implying that the December 20th date of the final hearing would pose a hardship for her. Judge Saldana declined to change the final hearing date.
6. On December 20, 2010, Complainant did not appear at the final hearing due to a medical condition. Complainant's attorney did appear and filed a motion for continuance on Complainant's behalf.
7. Before the continuance motion could be heard, however, Complainant's attorney suffered cardiac distress and was excused by the judge to seek medical attention.
8. In the absence of Complainant and Complainant's counsel, Judge Saldana allowed the mother's attorney to address the court regarding the merits of the still-pending continuance motion.
9. Although the attorney and his client had no additional information relating to Complainant's medical condition, the attorney did express his opinion that Complainant's absence was merely a "delaying tactic" to have the matter heard after December 31, 2010, which was Judge Saldana's last day in office.
10. Based on statements made during these proceedings, including "I know I am being played games with," and "we may run out of time," Judge Saldana appeared persuaded that Complainant was deliberately absenting himself from the proceedings as a delay tactic and in an effort to ensure that Judge Saldana's successor in office would handle the case.
11. Thereafter, at 2:45 p.m. that same day, on her own motion, Judge Saldana entered an "Order to TurnOver [sic] Minor Child," requiring Complainant to relinquish his child to the DFPS Investigator. The order was not supported or predicated on any verified pleadings and/or supporting affidavits on file with the court.²
12. At 5:00 p.m. that same day, without notice or an opportunity to be heard, Judge Saldana also issued a writ of attachment for the child based on a motion filed by the mother's attorney asserting, without elaboration, that the child was being "illegally restrained" by Complainant.

² Section 105.001(c) of the Texas Family Code provides that, "Except on a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure, an order may not be rendered: (1) Attaching the body of the child; (2) Taking the child into the possession of the court or of a person designated by the court; or (3) excluding a parent from possession of or access to a child."

13. At the time Judge Saldana issued the writ of attachment, there was no evidence that the child was being illegally restrained. In fact, Complainant was entitled to possession of the child through the Christmas Holiday pursuant to the existing custody and visitation order on file in the case.
14. On December 21, 2010, the writ of attachment was processed and officers with the Nueces County Sheriff's Office were sent to pick up the child. At approximately 11:50 a.m., after the officers had failed to locate Complainant or the child, they confronted Complainant's mother at a local convenience store.
15. After Complainant's mother tried without success to contact Complainant by phone, the officers instructed her to appear in Judge Saldana's court.
16. That afternoon, Complainant's mother appeared before Judge Saldana.
17. In her testimony before the Commission, Judge Saldana claimed that she did not order Complainant's mother to come to court and was not involved in the process of having the woman appear in court.
18. However, despite this claim, when Complainant's mother arrived, Judge Saldana placed her under oath and proceeded to question her, on the record, about the whereabouts of Complainant and the child.
19. At 5:42 p.m. that day, Complainant appeared in Judge Saldana's court with the child. Over his objections that his attorney was in the hospital and could not be present to represent him in this proceeding, Judge Saldana ordered Complainant to explain his whereabouts the previous day.
20. Despite Complainant's assertions that he was capable of caring for his son in his current medical condition, Judge Saldana ordered Complainant to turn over the child to the mother.
21. Judge Saldana then informed Complainant that she had already modified custody and visitation as a result of the "tremendously difficult time" she had "getting in touch" with Complainant.
22. Court records show that the judge entered "Temporary Orders," at 4:30 p.m., more than an hour before Complainant appeared in court with the child.
23. According to the "Temporary Orders," Judge Saldana's decision was based on evidence presented to her on December 20, 2010, when neither Complainant nor his attorney were before the court.
24. In her written and oral testimony before the Commission concerning these matters, Judge Saldana failed to be candid and forthright when responding to questions intended to elicit facts and evidence, and provided inconsistent and misleading information that often contradicted information contained in court records, all of which hampered the Commission's efforts to investigate and resolve the matter.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part, “A judge shall comply with the law. . . .”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part, “A judge . . . shall maintain professional competence in [the law].”
3. Canon 3B(8) of the Texas Code of Judicial Conduct states, in pertinent part, “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party [or] an attorney . . . concerning the merits of a pending or impending judicial proceeding.”
4. Article V, §1-a(6)A of the Texas Constitution states, in pertinent part, that a judge may be disciplined for “willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.”
5. Section 33.001(b)(5) of the Texas Government Code provides that failure to cooperate with the Commission constitutes willful or persistent conduct that is clearly inconsistent with the proper performance of the judge’s duties, in violation of Article V, §1-a(6)A of the Texas Constitution.

CONCLUSIONS

The Commission concludes from the facts and evidence presented that Judge Saldana violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct when she issued orders for Complainant to turn over his child and issued a Writ of Attachment for the child: (1) without notice to Complainant or his attorney; (2) without conducting a hearing; and (3) in the absence of supporting pleadings and/or affidavits on file with the court. In reaching this decision, the Commission recognizes the general rule that the principle of judicial independence requires that judges ought not to be subject to discipline for their discretionary decisions.³ However, in this case, the facts and evidence demonstrated that Judge Saldana’s actions on December 20, 2010 and December 21, 2010 were done not in a good faith effort to protect the best interests of the child, but rather to punish Complainant for what the judge perceived to be his efforts to delay the matter until she left office on December 31, 2010. Because she believed that she was “being played with,” Judge Saldana forced Complainant to relinquish custody of his child over the Christmas holidays without notice or a hearing, and/or without credible evidence that the child was in any harm or danger.

³ *In re Barr*, 13 S.W.3d 525, 544-545 (Tex.Rev.Trib. 1998).

The Commission also concludes that Judge Saldana violated Canon 3B(8) of the Texas Code of Judicial Conduct when she went forward with the December 20th proceedings in the absence of Complainant and his attorney, entertained *ex parte* arguments from opposing counsel and the mother about the merits of the pending motion for continuance, and acted upon that *ex parte* information by issuing a Turnover Order, a Writ of Attachment, and modified Temporary Orders.

Finally, the Commission concludes that Judge Saldana initially provided misleading information to the Commission in her sworn written responses, and thereafter provided oral testimony that contradicted court records previously supplied to the Commission. In addition, Judge Saldana's conduct and demeanor during her appearance before the Commission appeared designed to obfuscate the facts and evidence and thwart the Commission's attempts to investigate and resolve the issues presented by the complaint. Judge Saldana's lack of candor and cooperation with the Commission in this regard violated Article V, §1-a(6)A of the Texas Constitution and Section 33.001(b)(5) of the Texas Government Code, and proved to be an aggravating factor in reaching a final decision in this case.

In condemnation of the conduct that violates Canons 2A, 2B, and 3B(8) of the Texas Code of Judicial Conduct, Section 33.001(b)(5) of the Texas Government Code, and Article V, §1-a(6)A of the Texas Constitution recited above, it is the Commission's decision to issue a **PUBLIC WARNING** to the Honorable Marisela Saldana, Former Judge of the 148th Judicial District Court in Corpus Christi, Nueces County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC WARNING** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 12th day of November, 2013.

ORIGINAL SIGNED BY

Tom Cunningham, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC Nos. 10-1202-MU & 10-1234-MU

PUBLIC REPRIMAND

**HONORABLE REYNALDO CEDILLO
FORMER MUNICIPAL COURT JUDGE
PENITAS, HIDALGO COUNTY, TEXAS**

During its meeting on April 9-10, 2014, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Reynaldo Cedillo, former Municipal Court Judge in Penitas, Hidalgo County, Texas. Judge Cedillo was advised by letter of the Commission's concerns and provided written responses. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all relevant times, Judge Cedillo served as the Municipal Court Judge in Penitas, Hidalgo County, Texas.
2. As a part-time judge, Judge Cedillo attended court for approximately one hour per week. He left the bench in 2011.
3. During his seven years on the bench, Judge Cedillo entered numerous orders labeled as "Orders of Dismissal" and/or "Judgment Orders," in which he purportedly placed defendants on "probation" with the following single condition: "The Defendant must maintain a clear record in the State of Texas during the time ordered below, including any and all citation/warrants."
4. The orders did not include any assessment of court costs, as required by Article 45.051 of the Texas Code of Criminal Procedure. Instead, the orders typically stated that: "If Defendant doesn't comply with this order and regulation, he or she must give a secure payment in the amount of \$___ and court cost."
5. In his response to the Commission's inquiries, Judge Cedillo stated that he orally ordered defendants to pay court costs after accepting their pleas in open court and

placing them on deferred disposition. According to the judge, he relied on his court clerks to ensure that the defendants paid the court costs as required by statute. However, Judge Cedillo acknowledged that there was no documentation in the record to establish that any such court costs were assessed and/or collected by the clerks.

6. Judge Cedillo also entered numerous orders labeled as “Judgments of Acquittal” and “Judgment: Jury waived-Not Guilty.” These orders typically stated that the defendants had entered pleas of “not guilty” and had then waived a jury trial. The orders further reflected that the court had “heard the evidence and arguments,” and had then found the defendant “not guilty of the offense.” The orders concluded by stating that the defendants were “discharged . . . from all further liability for the offense,” and that the defendants “may go hence without payment of costs.”
7. During the course of its investigation, the Commission obtained a written statement from the city prosecutor assigned to Judge Cedillo’s court, who stated that he had never been noticed of any trials in Judge Cedillo’s court and had never appeared for any trial and/or other court proceedings.
8. The city prosecutor further stated that he had never filed any motions to dismiss any criminal cases pending in the judge’s court.
9. In his written response to the Commission’s inquiries, Judge Cedillo acknowledged that he had dismissed numerous cases without receiving a motion from the city prosecutor and/or without any other involvement from the prosecutor.
10. According to Judge Cedillo, in most instances, he dismissed cases when he believed there was something “wrong” with a citation, such as a lack of probable cause to initiate a traffic stop. To determine this, Judge Cedillo stated that he would discuss the circumstances of the stop with the defendant, contact the officer who conducted the stop, and then dismiss the defendant’s citation, without any involvement from the city prosecutor.
11. Judge Cedillo denied that he dismissed citations with the intent of favoring a particular defendant. Instead, Judge Cedillo averred that he dismissed the cases based on a mistaken belief that he had the authority to do so. The judge acknowledged that his decision to dismiss these cases stemmed from a “wrong judgment on [his] part.”
12. Although Judge Cedillo did suggest that his court staff may have signed some orders in his absence due to his limited presence at the courthouse, he also acknowledged that it was ultimately his responsibility to supervise his staff.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall comply with the law...”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall maintain professional competence in [the law.]”

3. Canon 3B(8) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall accord every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.”
4. Canon 6C(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.”

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Cedillo routinely and persistently failed to comply with the law and displayed a lack of professional competence in the law when he: (a) entered orders of deferred disposition that did not include an assessment of court costs as required by the Texas Code of Criminal Procedure and failed to maintain court records, receipts, or bank statements to document the payment of court costs that were allegedly collected by court staff; (b) entered orders dismissing cases without notice to or a motion from the city prosecutor, as required by law; and (c) entered orders indicating that he was holding trials and finding defendants not guilty, without notifying the city prosecutor of trial settings and/or without giving the prosecutor an opportunity to appear.

Further, Judge Cedillo’s admitted practice of conducting his own independent investigation as to whether a citation lacked probable cause, which included engaging the defendant in a discussion concerning the merits of the case and contacting the officer that issued the citation, demonstrated a failure to understand the proper role of a judge as a neutral, detached magistrate. Because this was done in the absence of the prosecutor, it also violated the prohibition against improper *ex parte* communications and deprived the prosecution of its right to be heard.

In reaching its decision, the Commission took into account that Judge Cedillo was a part-time judge who was not present in the court on a daily basis. As a result, it is certainly possible that his staff may have been responsible for signing Judge Cedillo’s name to some of the orders in his absence. However, as Judge Cedillo acknowledged, judges are responsible for supervising their staff and ensuring that the court’s business is conducted in a timely, efficient and lawful manner. Judge Cedillo failed in performing this responsibility.

In light of the foregoing, the Commission concludes that Judge Cedillo’s conduct, as described above, constituted willful or persistent violations of Canons 2A, 3B(2), 3B(8) and 6C(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 3B(2), 3B(8) and 6C(2) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC REPRIMAND** to the Honorable Reynaldo Cedillo, former Municipal Court Judge in Penitas, Hidalgo County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above is made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 15th day of May, 2014.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 12-0601-JP

PUBLIC WARNING

**HONORABLE IMELDA “PINKY” CRUZ
FORMER JUSTICE OF THE PEACE, PRECINCT 1
RIO GRANDE CITY, STARR COUNTY, TEXAS**

During its meeting on February 12-13, 2014, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Imelda “Pinky” Cruz, Former Justice of the Peace for Precinct 1, Rio Grande City, Starr County, Texas. Judge Cruz was advised by letter of the Commission’s concerns and provided a written response. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Imelda “Pinky” Cruz was Justice of the Peace for Precinct 1, Rio Grande City, Starr County, Texas.¹
2. On November 14, 2011, as a candidate for re-election to the office of Starr County Justice of the Peace, Precinct 1, Judge Cruz filed a campaign treasurer appointment with the Starr County Elections Department as required by law.
3. As a candidate for public office, Judge Cruz was required by law to file periodic campaign finance reports with the Starr County Elections Department. These reports are to include campaign contributions received by the candidate, including

¹ Judge Cruz lost the 2012 primary election and left office on December 31, 2012.

“in kind” contributions, as well as expenses made by the candidate or on behalf of the candidate.

4. During the 2012 primary election, Judge Cruz appeared in a number of joint campaign advertisements with J.M. “Chuy” Alvarez, a local attorney and candidate for Starr County Commissioner. Each advertisement contained the following disclaimer: “Pol Adv. Paid for by Candidates.”
5. At least one of Judge Cruz’ campaign advertisements contained the specific disclaimer: “Pol Adv. Paid for by Iselda “Trinita” Alvarez (Treasurer).” Election records confirm that Ms. Alvarez was designated by Judge Cruz as her campaign treasurer.
6. The Elections Department had no record that Judge Cruz’s campaign treasurer filed any reports disclosing advertising expenses made on behalf of the campaign. Likewise, there were no reports filed that disclosed the receipt of an in-kind contribution for the value or cost of the advertisements. In fact, no reports of any kind were filed by Judge Cruz’ campaign treasurer during the campaign.
7. In her initial responses to the Commission’s inquiries, Judge Cruz denied that she had approved or authorized the use of her name or image in any of the joint advertisements in which she appeared with Mr. Alvarez. Judge Cruz claimed to have had no knowledge of the advertisements and no involvement in their production or placement in local media outlets.
8. When asked specifically about the nature and extent of her relationship with Mr. Alvarez, Judge Cruz stated only that he was an attorney who appeared in her court no more than five times in the past.
9. After the Commission requested that Judge Cruz provide a more thorough and candid response to its inquiries, Judge Cruz acknowledged that she neither paid for the advertisements in which she appeared nor did she report the expenditures. In fact, according to both Judge Cruz and Mr. Alvarez, the advertisements were paid for entirely by Mr. Alvarez.
10. Judge Cruz further acknowledged that she failed to file any campaign finance reports during her campaign as required by law.
11. Finally, Judge Cruz acknowledged that Mr. Alvarez is married to her sister, Imelda “Trinita” Alvarez, who served as her campaign treasurer.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states: “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
2. Canon 4I(2) of the Texas Code of Judicial Conduct states: “A judge shall file financial and other reports as required by law.”
3. Article V, §1-a(6)A of the Texas Constitution states, in pertinent part, that a judge may be disciplined for “willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.”
4. Section 33.001(b)(5) of the Texas Government Code provides that failure to cooperate with the Commission constitutes willful or persistent conduct that is clearly inconsistent with the proper performance of the judge’s duties, in violation of Article V, §1-a(6)A of the Texas Constitution.

CONCLUSIONS

The Commission concludes from the facts and evidence presented that Judge Cruz failed to disclose expenditures made by others on behalf of her campaign and failed to file campaign finance reports as required by law, in willful and persistent violation of Canons 2A and 4I(2) of the Texas Code of Judicial Conduct. As an aggravating factor in reaching its decision, the Commission notes that Judge Cruz provided misleading and incomplete information in her sworn written responses to the Commission’s initial inquiry, which needlessly delayed the investigation and impeded the resolution of this case. Judge Cruz’s lack of candor and failure to cooperate with the Commission’s investigation constituted a willful violation of Article V, §1-a(6)A of the Texas Constitution and Section 33.001(b)(5) of the Texas Government Code.

In condemnation for conduct that violated Canons 2A and 4I(2) of the Texas Code of Judicial Conduct, Section 33.001(b)(5) of the Texas Government Code, and Article V, Section 1-a(6)A of the Texas Constitution recited above, it is the Commission's decision to issue a **PUBLIC WARNING** to the Honorable Imelda “Pinky” Cruz, Former Justice of the Peace for Precinct 1, Rio Grande City, Starr County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above is made the subject of a **PUBLIC WARNING** by the State Commission on Judicial Conduct.

The Commission takes this action in a continuing effort to protect public confidence in the judicial system, and to assist the state judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 16th day of May, 2014.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC Nos. 12-0096-DI, 12-0545-DI, 13-0729-DI, AND 14-0057-DI

PUBLIC REPRIMAND

**HONORABLE STEPHEN R. TITTLE, JR.
196TH JUDICIAL DISTRICT COURT
GREENVILLE, HUNT COUNTY, TEXAS**

During its meeting on April 9-10, 2014, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Stephen R. Tittle, Jr., Judge of the 196th Judicial District Court, Greenville, Hunt County, Texas. Judge Tittle was advised by letter of the Commission's concerns and provided written responses. Judge Tittle appeared before the Commission with counsel on April 10, 2014, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions.

BACKGROUND INFORMATION

Judge Stephen R. Tittle, Jr. was elected to the 196th Judicial Court bench in November 2010, and assumed office on January 1, 2011. For approximately ten years prior to his election to the bench, Judge Tittle had been a prosecutor for the Hunt County District Attorney's Office, where he worked with, and developed a friendship with, Christina Gaston, a probation officer with the Hunt County Community Supervision and Corrections Department (CSCD). Shortly after he became a judge, Judge Tittle issued a directive that no probation officers other than Gaston and the Director of the CSCD, James "Jim" McKenzie, would be permitted to serve the 196th District Court. Gaston served as the Court Officer for the 196th District Court until she was terminated by McKenzie on October 6, 2011.

During the months before her termination, Gaston met privately with Judge Tittle on several occasions to discuss whether CSCD Director McKenzie had engaged in illegal conduct by accepting cash payments and exercise equipment from probationers that he later donated to the

YMCA.¹ Despite his concerns that McKenzie may have committed a crime, Judge Tittle failed to raise this issue during an August 2011 meeting with McKenzie and the other Hunt County judges where Judge Tittle's stated concerns were resolved with an agreement that probationers would no longer be able to pay cash in lieu of performing community service hours ordered by the court.²

Shortly before Gaston's termination, McKenzie delivered a letter to the Hunt County judges, including Judge Tittle, notifying them that Gaston was under investigation for, among other things, creating an impression that she was in a special position to influence Judge Tittle's conduct and judgment. Within hours of the notice, Judge Tittle sent McKenzie an email accusing the Director of illegally collecting cash and exercise equipment from probationers that he later donated to a friend. McKenzie defended himself against these accusations in an email and followed up his response with a letter addressed to all of the Hunt County judges.³ Judge Tittle did not disclose the source of the accusations in his email or in response to McKenzie's subsequent request that he identify the accuser. A few days later, Gaston was terminated. Gaston subsequently filed a wrongful termination action against the CSCD claiming whistleblower status, contending that she was fired for reporting to Judge Tittle the CSCD Director's illegal donation of cash and exercise equipment to the YMCA. Gaston's lawsuit remains pending.

In the two years following Gaston's termination, the Commission received numerous complaints against Judge Tittle, filed by CSCD Director McKenzie, CSCD Deputy Director John Washburn, Greenville attorney Joe Weis, and Hunt County Attorney Joel Littlefield, alleging that Judge Tittle misused the powers of his judicial office and engaged in a willful and persistent pattern of retaliatory conduct against McKenzie and the CSCD for terminating his friend, Gaston. Among other things, the Complainants alleged that Judge Tittle used his position and authority in an attempt to force McKenzie to personally prepare and present Presentence Investigation Reports and to prevent McKenzie from delegating the preparation of those report to supervising probation officers; to embarrass and malign McKenzie during court proceedings in which the judge forced McKenzie to testify; to threaten McKenzie with contempt of court and criminal prosecution for his failure to comply with court orders; and to cause financial harm to the CSCD through court-ordered waivers of mandatory probation fees designated by statute to fund a portion of CSCD operations.

In his testimony before the Commission, Judge Tittle denied that any of the rulings he made against McKenzie or that harmed the CSCD were the result of retaliation for Gaston's termination. However, Judge Tittle did acknowledge the existence of an adversarial relationship between McKenzie and him. According to Judge Tittle, however, it was McKenzie who disliked and was

¹ At the time, Hunt County Court at Law Judge Andrew Bench served on the local YMCA board of directors. Judge Tittle has publicly stated on several occasions that this relationship and the donation of money and equipment by McKenzie constituted an unlawful conflict of interest.

² According to McKenzie, for several years certain organizations in the community had begun accepting cash donations from probationers who were allowed to "buy off" their community service hours. The organizations had done this because they had a greater need for cash donations and did not need or want probationers working on their properties. While the practice was neither initiated nor promoted by the CSCD, the department was aware of it. The CSCD notified the organizations to stop the practice after concerns were raised by Judge Tittle.

³ According to McKenzie, the basis for the accusation arose from a campaign promoted by certain Hunt County probation officers to collect cash and exercise equipment from probationers that were to be donated to the local sheriff's department. When McKenzie learned of the program in February 2011, he immediately advised the officers to stop due to his concerns that the program would be improper. Any money and equipment already collected was donated to the local YMCA, a nonprofit organization to which the CSCD was permitted to donate the items.

angry with Judge Tittle because he reported to the District Attorney and other entities that the Director had engaged in illegal activity. According to McKenzie's testimony and other evidence in the record before the Commission, however, Judge Tittle never disclosed to McKenzie that he had reported these activities to the District Attorney or to other entities for a criminal investigation. Regardless of the source of the conflict, it is clear from the record before the Commission that the adversarial relationship between Judge Tittle and McKenzie influenced Judge Tittle's conduct and judgment in various proceedings before the court, as described in more detail in the Commission's Findings of Fact and Conclusions of Law recited below.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Stephen R. Tittle, Jr., was Judge of the 196th Judicial District Court in Greenville, Hunt County, Texas.

Orders for Pre-Sentence Investigation (PSI) Reports⁴

2. In December 2011, within two months of Gaston's termination, Judge Tittle began ordering McKenzie to personally prepare and present Presentence Investigation Reports (PSIs) in cases pending before the 196th District Court.⁵
3. Because McKenzie, as the Director of the CSCD, did not supervise probationers, he delegated the preparation and presentation of the court-ordered PSIs to an officer who supervised probationers.
4. In each instance, a PSI was prepared and timely filed by a qualified, certified probation officer (CSO) as required by law; however, none were prepared or presented by McKenzie as ordered.
5. In each instance, Judge Tittle refused to accept the PSI that had been prepared and timely filed by a CSO, and instead, attempted to enforce at least two of his orders through constructive contempt and criminal contempt proceedings against McKenzie.
6. Judge Tittle pursued the contempt proceedings against McKenzie despite having been advised by McKenzie's attorney, Joe Weis, that the judge's orders were not lawful or valid and despite being informed by prosecutors and defense counsel that no one needed or was relying on the PSI.
7. In May 2012, after Judge Tittle ordered McKenzie to personally prepare and present a PSI in the case of *State vs. Justin West*, the Hunt County District Attorney, Noble Walker, and the Hunt County Attorney, Joel Littlefield, sent a request to the Texas Attorney General's Office seeking an opinion as to whether a judge could lawfully interfere with the duties of

⁴ A presentence investigation report, prepared by a probation or community supervision officer, is used to assist the judge in sentencing and contains information on the offense committed, an assessment of the offender's background, and sentencing recommendations. Specifically, Article 42.12 §9 of the Texas Code of Criminal Procedure provides that "the judge shall direct a *supervision officer* to report to the judge in writing on the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the judge." (Emphasis added)

⁵ While it remains unclear whether Judge Tittle had ever issued an order for a PSI before this time, the record demonstrates that this was the first time that any judge had ordered McKenzie, as the CSCD Director, to personally prepare and present a PSI.

the Director of the CSCD, which allowed the Director to delegate the preparation and presentation of a PSI to another CSO.

8. Because Walker and Littlefield had relied on Judge Tittle's order for a PSI in the *West* case, which was still pending, the Attorney General's Office declined to address the issue due to separation of powers concerns.
9. On July 11, 2012, Judge Tittle presided over the sentencing hearing in the *West* case. The PSI that Judge Tittle had ordered had been prepared and filed by a CSO, who was present in the courtroom to testify if necessary; however, District Attorney Walker and West's defense attorney advised Judge Tittle that they did not need the PSI, obviating the need for testimony from anyone at the CSCD.
10. Nevertheless, on his own accord, and over the objections of McKenzie's attorney, Weis, Judge Tittle called McKenzie to the stand. Judge Tittle proceeded to question the Director regarding the probation services available in Hunt County for sex offenders like West.
11. Judge Tittle then questioned McKenzie about his alleged failure "to set a good example for probationers" by not complying with the court's orders.
12. McKenzie responded to all of the judge's questions, as well as to questions posed by West's attorney, providing factual information based on the PSI that had been prepared by West's supervising probation officer, and based on his years of experience as the Director of the CSCD.
13. Judge Tittle was displeased with Walker for not prosecuting McKenzie for contempt of court, and for pursuing an opinion from the Attorney General's Office instead. Judge Tittle persisted in his pursuit of a criminal prosecution of McKenzie by asking Walker:

Mr. Walker, are you going to proceed with contempt proceedings against Mr. McKenzie or do we need a special prosecutor? ... So what I'm asking is: Is the D.A.'s office declining to prosecute and would want a special prosecutor appointed, attorney pro tem instead?
14. Judge Tittle then made the following statement and findings on the record:

But ultimately this court has to make a decision. And *instead of complying with the court's order, no one sought to enforce it.* That's not before us today. *That's for a future prosecution of Mr. McKenzie.* But *the court heard his testimony and finds that he was absolutely incredible; he has no credibility, is not truthful and [the court] does not rely on any of his statements in the decision today.* Mr. McKenzie through his own words, did admit that it was important for him to set a good example for his coworkers and his employees and for probationers, which he did not do. And I hope that Mr. West does not take any example from his lack of leadership. (Emphasis added)
15. Judge Tittle entered similar findings in each of the deferred adjudication judgments issued against *West* on August 1, 2012, to wit:

The Court FINDS the Presentence Investigation, was ordered, was not done according to the applicable provisions of Tex. CODE CRIM. PROC. Art. 42.12 §9. The State and Defense agreed to proceed without it. The court finds that the appointed author and witness, *Jim McKenzie, Hunt County Community Supervision and Corrections Department Director is not credible or believed in this case.* The Court ORDERS that Defendant is given credit noted above for the time spent incarcerated. The court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above. (Emphasis added)
16. On October 1, 2012, following the entry of deferred adjudication judgments in the *West* case, Walker and Littlefield renewed their request for an opinion from the Attorney

General's Office, advising that office that "the cases in which these issues were raised have now been finally disposed of by final judgments entered on August 1, 2012."⁶

17. On October 29, 2012 and November 28, 2012, on his own motion, Judge Tittle held "review hearings" in the *West* case for the purpose of discussing the representations made by Walker and Littlefield in their most recent request for an Attorney General opinion.
18. Specifically, Judge Tittle challenged the representation that the *West* case had been finally decided, contending that because the adjudication of guilt had been deferred, there was no final disposition and issues remained pending before the 196th District Court.
19. Although Walker had been notified of the review hearings, he declined to attend. Another prosecutor from his office appeared in his stead. Littlefield received no notice of the hearings and did not attend.
20. At the conclusion of the November 28, 2012 hearing, without testimony in the record from Walker or Littlefield, Judge Tittle made the following findings, which were also placed on the docket sheet for the *West* case:

The statements by Mr. Walker and Mr. Littlefield were false, untruthful and misleading, dishonest and deceitful.
21. Despite having made express findings in the *West* case that McKenzie was neither credible nor truthful, on December 4, 2012 and January 23, 2013, Judge Tittle ordered McKenzie to personally prepare and present PSIs in two more cases. Judge Tittle had also changed the language in his orders to include an additional prohibition that prevented McKenzie from delegating the work to any other CSO in the department.
22. On February 19, 2013, the Attorney General's Office issued Opinion No. GA-0991, stating that a district judge does not have the authority to order the director of a probation department who does not supervise defendants placed on community supervision to personally prepare a PSI or to personally appear in court to present the PSI.
23. Although Judge Tittle was dismissive of the Attorney General's Opinion,⁷ he did amend his January 2013 PSI order to allow McKenzie to delegate the preparation and presentation of the report to another CSO.

Probation Fee Waivers

24. In February 2013, Judge Tittle caused notices to be sent to all defendants serving probation out of the 196th District Court, requiring them to appear for a "mandatory" review hearing pursuant to Article 42.12 §20 of the Texas Code of Criminal Procedure.⁸ Approximately

⁶ The October 1, 2012 Request for an Attorney General Opinion was assigned reference number RQ-1089-GA.

⁷ At an April 10, 2013 hearing, Judge Tittle stated, "I've been submitted an AG opinion that the court has already made findings on that it was requested and received by less than honorable means...There's correspondence in here from Jim McKenzie, the director of adult probation...I don't know why he's citing case law to me, not case law but an opinion of his attorney...But I'll take that and put it in the trash appropriately."

⁸ Article 42.12 §20 of the Texas Code of Criminal Procedure provides that on completion of one-half of the original community supervision period or two years of community supervision, *whichever is more*, the judge shall review the defendant's record and consider whether to reduce or terminate the period of community supervision, unless the defendant is delinquent in paying required restitution, fines, costs, or fees that the defendant has the ability to pay or the defendant has not completed court-ordered counseling or treatment. (Emphasis added)

40 probationers were sent notices to appear on March 8, 2013 for an Article 42.12 §20 review hearing.

25. McKenzie was also ordered to appear and did appear at the March 8th proceedings, along with the supervising probation officers for each of the probationers that appeared.
26. As a reward⁹ for showing up, Judge Tittle waived the payment of the \$60 per month probation fee that had been assessed against each probationer.¹⁰
27. None of the defendants who appeared on March 8th had an attorney present to represent his/her interests; nor did Judge Tittle offer to have an attorney appointed to protect their interests during these proceedings.¹¹
28. While conducting the review hearings, Judge Tittle determined that none of the probationers who appeared on March 8th was eligible for early release under Article 42.12 §20.¹²
29. Nevertheless, without the benefit of legal counsel, notice, or an opportunity to be heard, at least three of the probationers who appeared on March 8th pursuant to the Article 42.12 §20 notice were jailed as a sanction. Judge Tittle also ordered that their probation sentences be extended and/or ordered that other conditions of probation be modified.
30. On March 20, 2013, Judge Tittle was scheduled to hear additional Article 42.12 §20 review hearings. Although the Court Officer and all supervising probation officers were present and available to testify regarding the probation status of the defendants who appeared, McKenzie did not appear.
31. Because McKenzie failed to appear, Judge Tittle refused to go forward with any of the review hearings.

⁹ Although Judge Tittle did not expressly use the term “reward” when waiving probation fees, he did inform probationers at a subsequent review hearing that “you all have a benefit that should be bestowed upon you for showing up, regardless of whether you are in compliance or not in compliance.” In his written responses to the Commission’s inquiry, Judge Tittle explained further that “during these review hearings, I have implemented a system of reward and punishment for the probationers. Those probationers who have performed well are rewarded by advantageously altering their probation terms by some type of reduction in length of probation; fee reduction; community service reduction; and lessening the reporting frequency.”

¹⁰ Under Article 42.12 §19 of the Texas Code of Criminal Procedure, a judge is required to assess a monthly probation fee to be paid by defendants placed on community supervision out of his court. The procedure for the waiver of probation fees is expressly set out in subparagraph (a) of §19, which provides that the court “may waive or reduce the fee or suspend a monthly payment of the fee if the judge determines that payment of the fee would cause the defendant a significant financial hardship.”

¹¹ Article 1.051 of the Code of Criminal Procedure provides that an indigent defendant is entitled to have an attorney appointed to represent him or her when: (1) there is an adversarial judicial proceeding that may result in punishment by confinement and (2) in any other proceeding if the court concludes that the interests of justice require representation.

¹² Not every offense is eligible for an Article 42.12 §20 review hearing. Under subsection (b) of this section, a review hearing under §20 “does not apply to a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, a defendant convicted of an offense for which on conviction registration as a sex offender is required under Chapter 62, or a defendant convicted of a felony described by Section 3g.” During these proceedings, Judge Tittle stated that he was aware that certain probationers who had appeared were not eligible for early release under §20, but that he was “still required to perform a review.”

32. Instead, Judge Tittle appointed an attorney, Luis Merren, to represent all of the probationers who had shown up “so that [their] interests are protected;”¹³ waived the monthly probation fees assessed against each probationer “as a benefit for showing up” when McKenzie had failed to appear; and directed Merren “to try to *secure [McKenzie’s] attendance* whether that is *through a subpoena or other process* for 1:30 this afternoon.” (Emphasis added)
33. On or shortly after March 22, 2013, McKenzie was served with the subpoenas that had been issued by Merren at Judge Tittle’s behest. The subpoenas directed McKenzie to appear on April 12, 2013, for the Article 42.12 §20 review hearings that had been rescheduled from March 20, 2013.
34. On April 10, 2013, Eric Vinson, an attorney with the Texas Attorney General’s Office, filed motions to quash the subpoenas issued for McKenzie’s April 12th appearance.
35. At the commencement of the April 12th proceedings, Judge Tittle announced that he wanted McKenzie to present a plan to the court to make sure probationers were reviewed on a timely basis, to ensure that those probationers who were eligible for early release were identified so that probationers were not inconvenienced, and to inform the court of the fiscal impact any waiver of fees would have on the CSCD.
36. Judge Tittle then explained his purpose for conducting “mandatory review hearings,” by noting that “the Court takes judicial notice that courts are required by law, they shall review those people eligible for early probation at least every two years.”¹⁴ That has never been done in this county.”
37. Merren then informed Judge Tittle that he intended to call the supervising probation officers in each review case and did not need McKenzie to remain in the courtroom subject to the subpoenas.
38. Before releasing McKenzie from the subpoenas, and without ruling on the still pending motions to quash, Judge Tittle attempted to have the motions to quash removed from the court files or, alternatively, to have them sealed.
39. After Vinson argued that he could not lawfully do either, Judge Tittle challenged Vinson to prove the source and veracity of certain statements contained in the motions to quash.
40. Specifically, Judge Tittle took issue with the statement that “on or about March 20, 2013, Judge Tittle appointed Lu Merren to represent 27 probationers funded by the taxpayers of Hunt County.”¹⁵

¹³ Based on the record of the proceedings, and the paperwork submitted in connection with the payment of Merren’s fees, Judge Tittle made no inquiry as to whether any of the probationers who appeared on March 20th were already represented by retained counsel or wanted an attorney but could not afford one, nor did he make a determination that the interests of justice required representation.

¹⁴ This is not an accurate reflection of the requirement set forth in Article 42.12 §20 of the Texas Code of Criminal Procedure. In fact, there is no provision under Article 42.12 that mandates a court, on its own initiative, to conduct regular “review hearings.”

¹⁵ As of April 12, 2013, Hunt County taxpayers had not yet “funded” Merren’s representation of the probationers; however, following these proceedings, Merren did submit a fee affidavit to the court for each of the cases to which he had been appointed, and Judge Tittle did approve his fees in the total amount of \$3,750.00, which was paid by Hunt County.

41. Vinson then attempted to remind the judge of his statement, on the record, at the March 20, 2013 proceedings, to wit:

So that your interests are protected, the Court is going to appoint Mr. Lu Merren who is in court this morning to represent all of you on your review. *You are not required to pay the \$100 per hour for his fee. However, he can bill that for each and every case.* (Emphasis added)
42. Judge Tittle then questioned Vinson regarding the accuracy of the assertion that Judge Tittle had ordered or directed Merren to issue subpoenas compelling McKenzie's appearance in court.
43. Judge Tittle eventually terminated his interrogation of Vinson with the following pronouncement: "the Court makes a finding that there are false and inaccurate statements and will not hear the matter."
44. From January 15, 2013 through April 30, 2013, Judge Tittle waived monthly probation fees in the amount of approximately \$204,481.25, most of which resulted from the Article 42.12 §20 review hearings held in March and April 2013.¹⁶
45. Although he reinstated the probation fees for two probationers in May of 2013, without notice or a hearing, Judge Tittle refused to rule on requests and motions to reinstate fees or to vacate the orders waiving fees filed by Weis on behalf of the CSCD for the approximately 70 - 80 cases that remained.
46. The record before the Commission reflects that a public meeting was held on May 9, 2013, before the Hunt County Commissioners Court, at which time the CSCD budget was discussed. Among those who were present and participated in the meeting were McKenzie, Weis, County Judge John Horn, County Attorney Joel Littlefield, District Judge Richard Beacom and County Court at Law Judge Andrew Bench.
47. At the public meeting, the CSCD fiscal officer, Mike Taylor, testified that two-thirds of the revenue generated annually by the CSCD came from supervision fees, which are "the backbone of our department." The discussion turned to the anticipated loss in revenue for the CSCD as a result of the fee waivers granted by Judge Tittle in March and April 2013, and the impact, including layoffs, this would have on probation services if budget cuts were necessary.
48. Hunt County Commissioners who attended the public meeting were openly critical of Judge Tittle, condemning the fee waivers and the appointments of Merren and Abramson as being an added tax on the citizens.
49. Judge Tittle was invited to participate in the public meeting but declined to attend.

Also, on April 5, 2013, Judge Tittle appointed Cariann Abramson to represent probationers who appeared for review hearings on that date. Abramson charged Hunt County \$250 for each of those cases, which fees were approved by Judge Tittle.

¹⁶ These totals have been publicly reported and were calculated based on the projected loss of \$60 per month for each probationer over the remainder of the probationer's total community supervision sentence. By way of comparison, records show that Judge Tittle had waived a total of \$61,008.50 in probation fees between January 1, 2011 and January 14, 2013.

The Bernard Kelly Trial

50. In February 2011, Bernard Dale Kelly, Jr., was indicted under the law of parties¹⁷ for the murder of his cousin, Treybbian Nelson. Kelly had driven the shooter, Tyrone McCurdy, to the scene of the crime, then agreed to drive McCurdy to another location after witnessing the shooting. McCurdy was also indicted for Nelson's murder, along with a third defendant who was tried as a juvenile.
51. In November 2012, Hunt County Assistant District Attorney Lauren Hudgeons prosecuted the case against McCurdy to a jury in Judge Tittle's court. McCurdy was convicted of murder and sentenced to 50 years in prison.
52. During the *McCurdy* trial, Kelly cooperated with the State, testified against McCurdy, and was instrumental in securing the conviction.
53. On November 28, 2012, Hudgeons and Kelly's attorney, Cariann Abramson, presented a plea agreement to Judge Tittle. The plea deal, which had been approved by the victim's mother and by law enforcement officers involved in Kelly's arrest, would have reduced the charge against Kelly to Aggravated Assault with a Deadly Weapon and a 5-year prison sentence.
54. Judge Tittle rejected the plea agreement.
55. On the Friday before the December 3, 2012 trial, Hudgeons and Abramson presented a motion to reduce the offense to Judge Tittle, who refused to rule on the motion.
56. On December 3, 2012, prior to *voir dire*, both Hudgeons and Abramson urged Judge Tittle to reconsider and accept the previously rejected plea bargain, which he refused to do.
57. Hudgeons then requested that Judge Tittle rule on the State's motion to reduce the offense to Aggravated Assault. Judge Tittle again failed to rule on the pending motion.
58. Hudgeons then presented a motion to dismiss the murder case,¹⁸ and asked Judge Tittle to accept the transfer of an Aggravated Assault case that Hudgeons had just filed against Kelly in the 354th District Court. Judge Tittle likewise refused to rule on the motion to dismiss the murder case and refused to accept the transferred case.
59. On the afternoon of December 3, 2012, a venire panel was seated and *voir dire* commenced.
60. As Hudgeons began speaking to the venire panel, she renewed her efforts to obtain a ruling from Judge Tittle on the pending motions and pled with the judge to either go forward on the newly indicted Aggravated Assault case that she had attempted to transfer to his court or accept the plea agreement.
61. Judge Tittle immediately and repeatedly interrupted Hudgeons, who continued to speak in a loud manner in order to be heard over the judge.

¹⁷ Also known as the Felony Murder Rule. Texas Penal Code § 7.02 states that a person can be criminally responsible for the actions of another if he or she aids and abets, or conspires with the principal.

¹⁸ Anticipating that Judge Tittle would deny the State's motion to reduce the charge, Hudgeons had already filed the Aggravated Assault case by information in the 354th District Court, where the current grand jury was in term. She immediately secured an order transferring the case to the 196th District Court.

62. Judge Tittle then ordered Hudgeons to stop talking and sit down under the threat of being detained by deputies. Hudgeons complied, at which time Judge Tittle prohibited her from going forward with the *voir dire*.
63. After the venire panel was escorted out of the courtroom, Judge Tittle admonished Hudgeons for her statements to the jury panel and for her conduct toward him, accused her of “filibustering,” and demanded an apology.
64. After attempting to explain her conduct, Hudgeons apologized and assured the judge that it would not happen again.
65. The following day, before the jury entered the courtroom, Judge Tittle issued an order prohibiting Hudgeons and Abramson from asking for plea reductions or mentioning plea agreements in the jury’s presence. Judge Tittle then made the following statement:
- We had an outburst yesterday in court. I believe the Court has appropriately addressed it. However, should there be any further outbursts, *Ms. Hudgeons, the Court does have duct tape*, does have a notepad and does have a pen. If you need to write your questions to the jury if that’s what it takes, I’m sure Ms. Bell who is sitting with you can read those questions, if there are any outbursts. I expect there will not be any.
66. Throughout the proceedings, Judge Tittle injected himself into the trial by questioning the State’s witnesses in order to establish the elements of murder and by interrupting the examination of witnesses with objections of his own if the testimony appeared to be favorable to Kelly.
67. On several occasions, sometimes in the jury’s presence, Judge Tittle made statements that were critical of Hudgeons, demeaned her skills as a prosecutor, questioned her ethics, and commented that she should lose her law license.
68. After the jury returned a verdict finding Kelly guilty of Aggravated Assault, Judge Tittle thanked them for their service and was in the process of releasing them when Abramson informed him that her client had elected to go to the jury for punishment.
69. Judge Tittle informed Abramson that it was too late to have the jury assess punishment as she had failed to file the election before trial. Although Hudgeons consented to Abramson’s oral election, Judge Tittle denied that request as well.
70. Before releasing them, Judge Tittle spoke to the jurors privately for several minutes, thanking them for their service. According to some of the jurors, Judge Tittle had been critical of the way the case had been presented to the jury by Hudgeons and Abramson.
71. Judge Tittle scheduled the punishment hearing for December 17, 2012, at which time Abramson asked for a mistrial based on Judge Tittle’s refusal to allow Kelly to change his election to have the jury assess punishment. Abramson also pointed out that she had timely filed a request to have the jury consider community supervision for Kelly.¹⁹ However, Judge Tittle denied the motion and proceeded to sentence Kelly to 12 years in prison.

¹⁹ Under Article 37.07(2)(b), a timely filed, verified motion for community supervision also allows a defendant to change his election and ask a jury to assess said punishment.

72. Based on Judge Tittle's treatment of Hudgeons during the *Kelly* trial, and during court proceedings in the weeks that followed the trial,²⁰ concerns were raised that Judge Tittle's personal feelings toward Hudgeons were having a negative impact on the rights of defendants in his court. As a result, Hudgeons was transferred to serve as the prosecutor for the 354th District Court.
73. Having been appointed to serve as Kelly's appellate attorney, Abramson filed an appellate brief with the 6th Court of Appeals in which she argued five points of error, including that Judge Tittle's conduct toward Hudgeons, both in front of the jury and outside its presence, was so prejudicial that it deprived Kelly of a fair and impartial judge in violation of his constitutional rights. In its responsive brief, the State conceded error with regard to this issue.
74. The Court of Appeals ultimately overturned Judge Tittle's 12-year prison sentence on the ground that Kelly had made a timely oral election to have the jury assess punishment. Although the Court acknowledged the "antagonism" between Judge Tittle and Hudgeons and the claim that Judge Tittle had lost his "neutrality," it declined to address these issues in reaching its decision.
75. After the *Kelly* case was remanded back to the 196th District Court for a new punishment hearing, the parties filed an Agreed Motion to Recuse seeking to remove Judge Tittle from the case.
76. On January 29, 2014, following a hearing, the Presiding Judge for the First Administrative Judicial Region recused Judge Tittle and appointed a visiting judge to take over the case. The visiting judge ultimately accepted the original plea agreement and sentenced Kelly to 5 years in prison.
77. In his written and oral testimony before the Commission, Judge Tittle denied that his treatment of Hudgeons violated the Code of Judicial Conduct; however, he later acknowledged in his testimony before the Commission that the comments regarding duct tape were not appropriate. Judge Tittle apologized to the Commission if Hudgeons "was personally offended by my statement."
78. Judge Tittle's conduct toward McKenzie, Hudgeons, and the fiscal impact of the probation fee waivers on the CSCD's operations and budget have received widespread media attention critical of Judge Tittle.
79. Judge Tittle lost the March 2014 primary election to his opponent, Hunt County Court at Law Judge Andrew Bench.

RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides, in relevant part, that, a judge may be disciplined for "willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of duties or casts public discredit upon the judiciary or the administration of justice."

²⁰ In unrelated proceedings in the weeks following the *Kelly* trial, as well as in his oral and written testimony before the Commission, Judge Tittle repeatedly accused Hudgeons of engaging in a pattern of forum shopping and discriminatory plea bargain practices. These claims were refuted by Hudgeons, District Attorney Walker, County Attorney Littlefield, and District Judge Beacom.

2. Section 33.001(b) of the Texas Government Code provides that, for purposes of Article V, Section 1-a(6)A of the Texas Constitution, “willful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties” includes: “(1) willful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business.”
3. Canon 2A of the Texas Code of Judicial Conduct provides that, “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
4. Canon 2B of the Texas Code of Judicial Conduct provides, in pertinent part, that, “A judge shall not allow any relationship to influence judicial conduct or judgment.”
5. Canon 3B(1) of the Texas Code of Judicial Conduct provides, in pertinent part, that, “A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.”
6. Canon 3B(3) of the Texas Code of Judicial Conduct provides that, “A judge shall require order and decorum in proceedings before the judge.”
7. Canon 3B(4) of the Texas Code of Judicial Conduct provides, in pertinent part, that, “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.”
8. Canon 3B(5) of the Texas Code of Judicial Conduct provides that, “A judge shall perform judicial duties without bias or prejudice.”
9. Canon 3B(8) of the Texas Code of Judicial Conduct provides, in pertinent part, that: “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.”

CONCLUSION

The Commission concludes from the evidence presented that Judge Tittle had an adversarial relationship with Jim McKenzie that started before or soon after Judge Tittle took the bench. That relationship improperly influenced Judge Tittle’s conduct and judgment, which was manifest in the judge’s (a) attempts to interfere in McKenzie’s responsibilities for the day-to-day operations of the CSCD; (b) orders that McKenzie was to personally prepare and present PSIs even though he did not supervise probationers; (c) attempts to enforce those orders through contempt of court proceedings and criminal prosecution; (d) undignified and discourteous conduct at the July 12, 2012 sentencing hearing in the *West* case, at which the judge interrogated Walker regarding his refusal to prosecute McKenzie, and called McKenzie to the stand for the purpose of public embarrassment through baseless “findings” that McKenzie had “no credibility” and was “not truthful;” (e) undignified and discourteous conduct at the November 28, 2012 review hearing in the *West* case, at which the judge made unwarranted “findings” on the record that the Hunt County District Attorney and the Hunt County Attorney had made “false, untruthful and misleading, dishonest and deceitful” statements in a Request for an Attorney General Opinion; (f) use of Article 42.12 §20 review hearings as a pretext to gratuitously “reward” the probationers who showed up with the waiver of monthly probation fees; (g) failure to comply with Article 42.12 §19 when waiving probation fees; (h) failure to comply with Article 42.12 §20 and the due process rights of defendants by issuing jail sanctions, increasing the terms of community supervision, and/or

modifying other conditions of probation without providing notice, the right to counsel, or the opportunity to be heard; (i) failure to comply with Article 1.051 of the Code of Criminal Procedure when appointing Lou Merren to represent the probationers who appeared on March 20, 2013; (j) undignified and discourteous conduct toward Assistant Attorney General Eric Vinson at the April 12, 2013 proceedings, at which the judge repeatedly challenged statements in the motions to quash as being untruthful and inaccurate and attempted to publicly embarrass Vinson through unwarranted “findings” that the motions contained “false and inaccurate statements;” and (k) refusal to rule on motions to reconsider the decision to waive probation fees or to reinstate the probation fees in more than 70 cases that had been handled during the Article 42.12 §20 review hearings held in March and April 2013. The Commission concludes that Judge Tittle’s conduct, as described above, constituted willful or persistent violations of Canons 2A, 2B, 3B(3), 3B(4), 3B(5), 3B(8) and Article V, §1-a(6)A of the Texas Constitution.

Texas jurisprudence in the context of judicial disciplinary actions has defined “willful conduct” to require a showing of intentional or grossly indifferent misuse of judicial office, involving more than an error of judgment or lack of diligence. *In re Davis*, 82 S.W.3d 140, 148 (Tex.Spec.Ct.Rev. 2002), citing *In re Bell*, 894 S.W.2d 119, 126 (Tex.Spec.Ct.Rev. 1995)(willful conduct requires “a showing of bad faith, including a specific intent to use the powers of office to accomplish an end which the judge knew or should have known was beyond the legitimate exercise of authority.”) The term has also been defined as the improper or wrongful use of the power of his office by a judge acting intentionally, or with gross indifference to his conduct. *In re Barr*, 13 S.W.3d 525, 534 (Tex.Rev.Trib. 1998), citing *In re Thoma*, 873 S.W.2d 477, 489-90 (Tex.Rev.Trib. 1994)(“willfulness...necessarily encompasses conduct involving moral turpitude, dishonesty, corruption, misuse of office, or bad faith generally, whatever the motive.”) Based on the record in this matter, the Commission concludes that there is sufficient evidence of bad faith in Judge Tittle’s conduct toward McKenzie and towards those individuals that the judge perceived were acting on McKenzie’s behalf.

This was not a case of a judge committing an error of judgment or lacking diligence. On the contrary, Judge Tittle clearly knows the law, having been board certified in criminal law in 2006. Moreover, in his responses to the Commission’s inquiries, Judge Tittle stated, “I am extremely knowledgeable regarding state criminal law and procedure, and I have studied and used the provisions of Texas Code of Criminal Procedure, and more specifically, Article 42.12, on a regular basis for about twelve years.” Based on those representations, the Commission discounted the notion put forth by Judge Tittle that he made mistakes in how he noticed and handled the Article 42.12 §20 proceedings, and concluded that Judge Tittle intentionally misused the judicial office to cause harm to McKenzie and others connected with him.

In addition to his bullying treatment of McKenzie and others, Judge Tittle demonstrated bad faith in some of the rulings described above. In reaching this conclusion, the Commission recognizes the general rule that the principle of judicial independence requires that judges ought not to be subject to discipline for their discretionary decisions.²¹ However, in this case, the evidence demonstrated that Judge Tittle’s orders that McKenzie personally prepare and present PSIs and the orders waiving probation fees were done not in a good faith effort to protect the interests or rights of the State or the defendants, but rather were made for the purpose of embarrassing and punishing McKenzie.

²¹ *In re Barr*, 13 S.W.3d 525, 544-545 (Tex.Rev.Trib. 1998).

The Commission also concludes that Judge Tittle abandoned the role of an independent, neutral and detached judge every time he became embroiled with McKenzie or someone who was, or appeared to be, working on McKenzie's behalf. When a judge fails to maintain an appropriate professional distance between himself and a litigant, that litigant's attorney, or the cause before the court, and "joins the fray," that judge has essentially abandoned his role as the impartial decision-maker. *See* David Rothman, *Embroidment*, Judicial Conduct Reporter, Spring 2008. In the proceedings described above, particularly those held on July 12, 2012, November 28, 2012, and April 12, 2013, Judge Tittle conducted himself in a manner reminiscent of the judge encountered by the United States Supreme Court in *Offutt v. United States*, 348 U.S. 11, 17 (1954). In that case, the Court criticized the trial court judge for failing to represent "the impersonal authority of law" and for allowing himself "to become personally embroiled with" counsel for one of the litigants. In *Offutt*, the Court denounced verbal exchanges similar to those initiated by Judge Tittle in the matter before the Commission, aptly describing them as a "continuous wrangle on an unedifying level." *Id.*

The Commission further concludes that Judge Tittle willfully and persistently violated Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct through his demeaning treatment of Lauren Hudgeons during and after the *Bernard Kelly* trial. Specifically, the Commission finds that the judge's threat to use duct tape on Hudgeons was excessive and unfair, especially given the fact that (a) Hudgeons had already apologized and promised not to engage in the conduct that offended the judge, and (b) the judge's own intransigence and unreasonable failure to rule on the State's motions contributed to the very situation that had so offended the judge. Further, Judge Tittle's animosity toward Hudgeons impacted the judge's conduct and judgment in the *Kelly* trial, in willful and persistent violation of Canons 2A, 2B and 3B(5) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution. Additionally, by preventing Hudgeons from conducting *voir dire*, Judge Tittle also interfered with the State's right to a fair trial, in willful violation of Canon 2A of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution. Finally, Judge Tittle failed in his duty to rule on the motions presented to him by Hudgeons and Abramson, in willful and persistent violation of Canon 3B(1) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.

Finally, the Commission concludes that Judge Tittle's conduct, as described above, was clearly inconsistent with the proper performance of his duties as a judge, and cast public discredit upon the judiciary and the administration of justice, in violation of Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the conduct described above that violated Canons 2A, 2B, 3B(1), 3B(3), 3B(4), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable Stephen R. Tittle, Jr., Judge of the 196th Judicial District Court, Greenville, Hunt County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 21st day of May, 2014.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct



BEFORE THE STATE COMMISSION ON JUDICIAL CONDUCT

CJC No. 12-0787-MU

PUBLIC REPRIMAND

**HONORABLE WILLIAM C. ROMO
FORMER MUNICIPAL COURT JUDGE
HIDALGO, HIDALGO COUNTY, TEXAS**

During its meeting on June 18-19, 2014, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable William C. Romo, former Municipal Court Judge for the City of Hidalgo, Hidalgo County, Texas. Judge Romo was advised by letter of the Commission's concerns and provided a written response. Judge Romo appeared before the Commission on June 19, 2014, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable William C. Romo was the Municipal Court Judge for the City of Hidalgo, Hidalgo County, Texas.
2. On or about April 7, 2012, a local newspaper, *The Monitor*, published an article entitled, "The Fix: In Hidalgo Municipal Court, it's who you know," containing allegations that Judge Romo had engaged in widespread "ticket fixing" in his court.
3. According to the article, over a 15-month span, Judge Romo had dismissed approximately 839 citations at the request of local politicians and city officials, or as favors to friends and court staff.¹
4. In his responses to the Commission's inquiry, and in his testimony before the Commission, Judge Romo noted that it would be impossible to determine if the

¹ More specifically, it was alleged that Rudy Franz (the uncle of Hidalgo Mayor John David Franz), along with City Manager Joe Vera and Hidalgo school district assistant superintendent Alvin Samano, among other local officials, hand-delivered "stacks of tickets to the courthouse, where they would be passed along to the judge" for dismissal.

information regarding the disposition of the 839 citations identified by the reporter was accurate due to inadequate record keeping and data entry errors by court staff.

5. Judge Romo also contended that in most, if not all instances, it was the associate judge who accepted the “stacks” of citations delivered to the court and who made the disposition entries in the computer system.
6. Judge Romo stated that he would then review the citations in order to ensure that their disposal by dismissal was done based on “proper legal authority.”
7. By way of example, Judge Romo asserted that certain citations identified in the article had been dismissed because they were so defective that they raised jurisdictional problems.
8. Judge Romo acknowledged, however, that the citations were routinely dismissed without a motion from the State as required by law.²
9. Judge Romo explained that he felt “pressured” to dismiss the citations without a prosecutor’s motion because city officials had expressed a desire not to pay a prosecutor to prepare and present dismissal motions.
10. According to Judge Romo, a culture of intimidation existed in Hidalgo city government that led him to believe that if he did not dismiss cases when requested, he would be fired.
11. Specifically, Judge Romo claimed that he “worked under the constant threat of being fired and of the clerks being fired if these or any other cases presented were not considered/dismissed.” He continued, “It was and to a very large part, still is the culture of the people in charge to dictate by directly telling you or by innuendo you will be fired if you do not do as they say.”
12. According to Judge Romo, he did not give preferential treatment to local politicians, city officials, friends or court staff as alleged in the article.
13. Instead, Judge Romo explained that it had been his practice to “give consideration” to anyone who personally asked him to review citations for dismissal, but he would do so by looking for a “legally permissible way to ‘give consideration.’”
14. According to the attorney hired to prosecute criminal cases in the Hidalgo Municipal Court, as a result of the media story, she met with Judge Romo and instituted a policy that would require a motion from the prosecutor before the court dismissed any case that required such a motion.³
15. However, according to Judge Romo, he had already stopped the practice of dismissing cases without a motion from the prosecutor seven months earlier, in September 2011, at which time he “completely refused to consider/dismiss any more citations and referred all those requests to the city prosecutor.”

² Article 32.02 of the Texas Code of Criminal Procedure provides, in relevant part, that, “The attorney representing the State may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal.”

³ Judges do have the authority to dismiss certain citations without a motion from the prosecutor. These “compliance” cases include citations for failure to maintain proof of financial responsibility, driving with expired inspection and/or registration stickers, and driving with obscured license plates, upon a defendant’s proof of compliance and payment of an administrative fee.

16. In May 2014, Judge Romo's term of office expired and was not renewed by the Hidalgo City Council.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, "A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
2. Canon 3B(2) the Texas Code of Judicial Conduct states, "A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism."
3. Article V, §1-a(6)A of the Texas Constitution provides that a judge may be disciplined for "willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice."

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Romo failed to comply with the law, and failed to maintain professional competence in the law, when he engaged in an extended practice of dismissing citations without a motion from the prosecutor. Judge Romo's defense that he acted out of fear of losing his job and/or was responding to other political pressures constitutes a willful and persistent failure to conduct the duties of office independently, and without being swayed by partisan interests, public clamor, or fear of criticism.

Judge Romo's description of the political landscape and culture in his community highlights a fundamental flaw in the system of justice that has been administered in the Hidalgo Municipal Court for some time. Given that the foundation of the justice system in a modern democratic society rests on the guarantee of an independent and impartial judiciary, a judge who disposes of cases out of fear that those in power will terminate him, or to satisfy the political or financial interests of an entirely separate branch of government, cannot be - nor can he be seen to be - independent. By definition, a judge who is not independent cannot be impartial. Based on his own testimony, Judge Romo was neither independent nor impartial when he dismissed cases without a prosecutor's motion; however, to the extent that the practice appears to have stopped with Judge Romo and if Judge Romo's successor refuses to succumb to pressures from local politicians, city officials, friends and court staff, it is possible that public confidence in the judiciary in the City of Hidalgo may eventually be restored.

The Commission concludes that Judge Romo's actions demonstrated both willful and persistent violations of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and brought public discredit upon the judiciary and upon the administration of justice, in violation of Article V, Section 1-a(6) of the Texas Constitution.

In condemnation of the conduct described above that violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the

Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable William C. Romo, former Municipal Court Judge for the City of Hidalgo, Hidalgo County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 3rd day of July, 2014.

ORIGINAL SIGNED BY

Hon. Steven L. Seider, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 12-1079-DI

**PUBLIC ADMONITION
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE NOE GONZALEZ
370TH JUDICIAL DISTRICT COURT
EDINBURG, HIDALGO COUNTY, TEXAS**

During its meeting on August 13-15, 2014, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Noe Gonzalez, Judge of the 370th District Court, Edinburg, Hidalgo County, Texas. Judge Gonzalez was advised by letter of the Commission's concerns and provided written responses. The judge appeared with counsel before the Commission on August 14, 2014, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Noe Gonzalez was Judge of the 370th Judicial District Court in Edinburg, Hidalgo County, Texas.

THE DOMIT DIVORCE CASE

2. Antun Domit is a McAllen businessman and developer. In 2006, one of his companies was involved in the development and construction of Ocean Tower, a 31-story luxury apartment building on South Padre Island.
3. On or about May 9, 2006, Domit filed for divorce from his wife, Maria, and the case was assigned to Judge Gonzalez's court (the "Domit Divorce Case").

4. As a result of structural and/or construction defects, construction on Ocean Tower stopped in 2008 and the building was demolished in 2009. In June 2008, Domit filed a lawsuit in the 357th District Court in Cameron County to recover more than \$125 million in damages (“the Ocean Tower Lawsuit”).
5. On November 10, 2008, Maria asked Judge Gonzalez to appoint a receiver over the couple’s community property, which included approximately 36 business entities (including Ocean Tower).
6. On November 18, 2008, Judge Gonzalez entered an order appointing attorney David Calvillo as the receiver in the Domit Divorce Case. The order authorized Calvillo to take “charge and possession” of the couple’s business entities, including Ocean Tower, and to “manage, control, and dispose of the property *as he sees fit*” (emphasis added).
7. In his testimony before the Commission, Judge Gonzalez explained that he entered the receivership order to protect the community estate prior to making any determination on the division of the parties’ community property and/or debts.
8. In August 2009, while the divorce remained pending, the Ocean Tower Lawsuit settled. The Domits’ company received approximately \$3.5 million from the settlement.
9. Calvillo immediately took control of the Ocean Tower settlement proceeds and placed them in a “Receivership Account” at Inter National Bank.
10. Thereafter, Calvillo hired Maria’s divorce attorneys to represent him in initiating and defending lawsuits related to the Domits’ business interests.
11. In his testimony before the Commission, Judge Gonzalez expressed that it was his belief that the parties had agreed to this arrangement and, therefore, he had no concerns about potential conflicts regarding Calvillo’s fiduciary relationships with Maria’s attorneys.
12. On August 26, 2009, Judge Gonzalez signed an “Agreed Order on Compensation of Receiver” in the Domit Divorce Case, which allowed Calvillo to pay himself, without court oversight or approval, his “standard hourly rate” plus “reasonable and necessary” expenses out of the Ocean Tower settlement proceeds. The order set forth that a party objecting to Calvillo authorizing payment of his own fees was required to file a written motion within 10 days of Calvillo’s submission of his fee statements to the parties’ attorneys.
13. Soon thereafter, Calvillo paid approximately \$108,000 to Maria’s divorce attorneys and approximately \$23,000 to Domit’s divorce attorneys out of the Ocean Tower settlement proceeds.
14. Judge Gonzalez acknowledged that the language in the receivership order, which allowed Calvillo to “manage, control, and dispose of the property as he sees fit,” was broad enough to give Calvillo the authority to file lawsuits on behalf of the Domits’ business entities and to pay himself and the Domits’ attorneys without any court oversight, approval, or intervention.
15. Judge Gonzalez further testified that he did not know how Calvillo determined the amounts to be paid or whether the amounts paid were reasonable and necessary. The

judge stated that neither party contested Calvillo's payment of his own fees and/or the payments made to the parties' attorneys.

16. On November 29, 2011, a petition was filed in the United States Bankruptcy Court for the Southern District of Texas by six of the Ocean Tower creditors sending Ocean Tower into involuntary bankruptcy. The Chapter 7 bankruptcy stayed the Domit Divorce Case.
17. On February 8, 2012, the bankruptcy court appointed attorney Michael Schmidt to serve as Trustee of the Ocean Tower bankruptcy proceedings. Schmidt obtained records showing that Calvillo had paid himself approximately \$1.2 million dollars in legal fees and expenses between 2009 and 2011 from the Receivership Account containing the Ocean Tower settlement proceeds. Calvillo also paid attorneys in the Domit Divorce Case legal fees and expenses in the amount of approximately \$1 million dollars from the Ocean Tower settlement proceeds. These payments were made without a determination of the rights of Ocean Tower creditors to those funds.
18. Thereafter, Schmidt filed adversary claims against Calvillo and the Domits' divorce attorneys asking the bankruptcy court to disgorge the fees Calvillo had paid to himself and to the attorneys from the Ocean Tower settlement proceeds.
19. Subsequently, Calvillo hired Maria's divorce attorneys to represent the receivership in the bankruptcy court.
20. The bankruptcy stay was lifted in order to finalize the Domits' divorce.
21. Schmidt's adversary claims against Calvillo and the Domits' attorneys are still pending in the bankruptcy court.
22. In his testimony before the Commission, Judge Gonzalez explained that the Domit Divorce Case was the first case in which he was required to appoint a receiver and that it was his only experience in this area of the law.

COMPLIANCE WITH THE COUNTY INDIGENT DEFENSE PLAN

23. The Hidalgo County Indigent Defense Plan provides that all courts in the county are to appoint attorneys to represent indigent defendants from a rotational public appointment list pursuant to the Texas Fair Defense Act as incorporated into the Texas Code of Criminal Procedure.
24. Under the administrative rules of the Texas Indigent Defense Commission,¹ if the top ten percent of appointed attorneys receive more than three times their representative share of appointments, there is a presumption that the appointment system being used is neither fair, neutral, nor nondiscriminatory.
25. Based on records obtained from Hidalgo County, during the period from January 1, 2008 through December 31, 2013, Judge Gonzalez appointed attorney Jeanne Holmes to represent indigent defendants in a disproportionately high percentage of criminal cases compared to other attorneys on the Hidalgo County rotating appointment list.

¹ The Texas Indigent Defense Commission was created to administer statewide appropriations and policies and to monitor compliance under the Texas Indigent Defense Act.

26. Specifically, Hidalgo County records indicated that Judge Gonzalez appointed Holmes to represent indigent defendants in approximately 778 cases during this period. This represented nearly 22% of the 3,568 appointments made to a total of 192 attorneys.²
27. The attorney with the next highest percentage of court appointments out of the 370th District Court received just over 400 appointments, while the attorney with the third highest percentage of court appointments received 180 appointments. In total, Holmes and two other attorneys received 38% of all appointments out of the 370th District Court between January 1, 2008 and December 31, 2013.³
28. Based on the records provided by Hidalgo County, the appointment system employed by Judge Gonzalez in the 370th District Court for the period between January 1, 2008 through December 31, 2013 exceeded the Texas Indigent Defense Commission's threshold for presuming that the court's system for appointments is fair, neutral, and nondiscriminatory.
29. In his testimony before the Commission, Judge Gonzalez acknowledged that Holmes had received a very large number of appointments from him. The judge explained that this occurred because Holmes was one of a few attorneys that personally appeared in his court and was available to accept appointments when Judge Gonzalez needed an attorney immediately to represent indigent defendants in cases involving a Motion to Revoke Probation or a Motion to Adjudicate.
30. According to Judge Gonzalez, because Holmes was physically present in the courtroom, she was available to accept an appointment when Judge Gonzalez needed to replace an attorney who failed to appear with his or her client for a court appearance.
31. Judge Gonzalez also explained that Holmes may have received more appointments because she had a good professional relationship with the lead prosecutor assigned to his courtroom, which enabled her to quickly resolve cases and thereby help alleviate jail overcrowding.
32. The Hidalgo County Indigent Defense Plan requires judges to maintain a list of attorneys eligible to represent indigent defendants in hearings on Motions to Revoke and Motions to Adjudicate, and to appoint those attorneys on a rotating basis from that list.
33. In his testimony before the Commission, Judge Gonzalez acknowledged that he was aware of the requirement in the Hidalgo County Plan to use a rotating list to appoint attorneys for indigent defendants in hearings on Motions to Revoke and Motions to Adjudicate, but the judge stated that no such list exists.

² During this same period, Judge Gonzalez also approved fee vouchers for Holmes' work in the amount of approximately \$475,000.00, which was nearly double the amount of fees paid to the attorney with the second highest number of indigent court appointments out of the 370th District Court. That attorney received approximately \$254,500 in fees through indigent court appointments from Judge Gonzalez.

³ In fact, of the 192 attorneys on Judge Gonzalez's court appointment list, the top ten received nearly 54% of all court appointments for this period, with Holmes receiving 40% of those appointments.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part that “A judge shall comply with the law...”
2. Canon 3B(2) the Texas Code of Judicial Conduct states, in pertinent part, that “A judge... shall maintain professional competence in [the law].”
3. Article V, Section 1-a(6)A of the Texas Constitution provides that any Texas judge may be disciplined for willful violation of the Code of Judicial Conduct, incompetence in performing the duties of office, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.

CONCLUSION

The Commission concludes from the evidence presented that Judge Gonzalez failed to comply with the law, failed to demonstrate professional competence in the law, and demonstrated incompetence in performing the duties of office, when he entered a receivership order in the Domit Divorce Case that granted the receiver, Calvillo, non-delegable judicial powers, including the unfettered authority to make payments to himself and his attorneys from the Ocean Tower settlement proceeds without any court oversight, approval, or intervention. Such broad receivership powers over the Domits’ property, which had yet to be subject to a court determination as to the rights of the respective parties in interest, was beyond the authority contemplated by the provisions in the Texas Family Code and/or the Texas Civil Practice and Remedies Code relating to the appointment of receivers. The Commission concludes that by issuing such an order, Judge Gonzalez violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Article V, section 1-a(6)A of the Texas Constitution.

In addition, the Commission concludes that Judge Gonzalez failed to comply with the Texas Fair Defense Act and the Hidalgo County Indigent Defense Plan in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, as evidenced by the disproportionately high percentage of indigent court appointments that attorney Holmes received from Judge Gonzalez from January 1, 2008 through December 31, 2013.

In condemnation of the conduct described above that violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Article V, section 1-a(6)a of the Texas Constitution, it is the Commission’s decision to issue a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Noe Gonzalez, Judge of the 370th District Court, Edinburg, Hidalgo County, Texas.

Pursuant to this Order, Judge Gonzalez must obtain **four (4) hours** of instruction with a mentor judge, in addition to his required judicial education in Fiscal Year 2015. In particular, the Commission desires that Judge Gonzalez receive this additional instruction in the area of receiverships.

Judge Gonzalez shall complete the additional **four (4) hours** of instruction described above within **sixty (60) days** from the date of written notification from the Commission of the

assignment of a mentor. Upon receipt of such notice, it is Judge Gonzalez's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **four (4) hours** of instruction described above, Judge Gonzalez shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 26th day of August 2014.

ORIGINAL SIGNED BY

Hon. Steven L. Seider, Chair
State Commission on Judicial Conduct



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC Nos. 14-0199-JP & 14-0356-JP

**PUBLIC REPRIMAND
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE KRISTOPHER L. TERRAZAS
JUSTICE OF THE PEACE, PRECINCT 1, PLACE 1
PECOS, REEVES COUNTY, TEXAS**

During its meeting on August 13-15, 2014, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Kristopher L. Terrazas, Justice of the Peace for Precinct 1, Place 1, Pecos, Reeves County, Texas. Judge Terrazas was advised by letter of the Commission's concerns, but failed to timely provide written responses. Thereafter, Judge Terrazas was subpoenaed to appear before the Commission. Judge Terrazas appeared before the Commission on August 15, 2014, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Kristopher L. Terrazas was Justice of the Peace for Precinct 1, Place 1, Pecos, Reeves County, Texas.
2. Judge Terrazas was a candidate for re-election in the March 2014 Primary, but lost. His last day in office is December 31, 2014.

CJC No. 14-0199-JP

3. On or about October 31, 2013, the Texas Justice Court Training Center ("TJCTC") reported that Judge Terrazas failed to obtain his required twenty (20) hours of judicial education for Fiscal Year 2013 (September 1, 2012 through August 31, 2013).
4. Judge Terrazas was not granted a waiver of this requirement.
5. According to a sworn affidavit from the TJCTC, within one year from the date he was elected to the bench, Judge Terrazas was required to obtain eighty (80) hours of judicial

education pursuant to Rule 3(a)(1) of the Texas Rules of Judicial Education and Section 27.005(a)(1) of the Texas Government Code.

6. In December 2011, Judge Terrazas registered to attend Stage I of the required training, a 20-hour course offered by the TJCTC for new justices of the peace.
7. On the first day of the seminar, Judge Terrazas arrived approximately four hours late, and provided no valid medical or personal reason for his late arrival.
8. Per TJCTC policy, Judge Terrazas was not allowed to attend the remainder of the seminar and was asked to leave.
9. In April 2012, Judge Terrazas registered to attend Stage III of the training, another TJCTC 20-hour course for new justices of the peace.
10. Again, on the first day of the seminar, Judge Terrazas arrived approximately two hours late, and because he had no valid medical or personal reason for the late arrival, he was asked to leave the seminar.
11. In September 2012, TJCTC staff advised Judge Terrazas by e-mail that although he would not be able to complete the required training for new justices of the peace during his first year on the bench as required by law, the judge could demonstrate a “good faith effort” to come into compliance by making up Stages I and III of the training during his second year on the bench.
12. In addition to the education hours he missed in the first year of his term in office, Judge Terrazas was also required to complete an additional 20-hour judicial training course to satisfy the continuing educational requirements for Fiscal Year 2013.
13. Judge Terrazas eventually completed Stage I in December 2012 and Stage III in June 2013; however, he failed to obtain the additional 20-hours of judicial education to satisfy the Fiscal Year 2013 compliance year.
14. In response to the TJCTC report that Judge Terrazas had not complied with the continuing judicial education requirements for Fiscal Year 2013, the Commission asked Judge Terrazas to respond to the allegations on February 28, 2014, April 29, 2014 and May 13, 2014.
15. Judge Terrazas failed or refused to respond to the Commission’s requests for information.
16. During his testimony before the Commission, Judge Terrazas acknowledged that he was aware of his duty to obtain judicial education each year.
17. Judge Terrazas testified that he had repeatedly failed to comply with his judicial education requirements, and that his failure to comply with the law or maintain professional competence in the law was persistent.
18. Judge Terrazas testified that in addition to serving as a justice of the peace, he also served as a trustee on the Pecos Barstow Toyah Independent School District, and served as the interim executive director for Frontier Child Appointed Special Advocates (“CASA”). Judge Terrazas is also the owner and operator of Terrazas Restaurant.
19. Judge Terrazas testified that he fell behind on his continuing judicial education requirements because he was busy and had taken on too many responsibilities.

20. Judge Terrazas advised the Commission that he had recently completed a required 10-hour Civil Law course prior to his appearance before them, but that he was not yet in compliance with the judicial education requirements for Fiscal Year 2014, which ends on August 31, 2014.

CJC No. 14-0356-JP

21. On January 19, 2012, at approximately 2:55 a.m., Judge Terrazas was arrested by a City of Pecos police officer for Public Intoxication, a Class C misdemeanor.
22. While being transported to the Pecos Municipal Criminal Justice Center, Judge Terrazas asked the officer if he could “just sign himself out.” The officer reported that when he responded, “No,” Judge Terrazas said, “[I] am the judge.”
23. Following his successful completion of a pre-trial diversion program, the Reeves County Attorney’s Office dismissed the Public Intoxication charge against Judge Terrazas.
24. The Commission sent Judge Terrazas a written inquiry asking that he respond to the allegations concerning the January 19, 2012 arrest, but the judge failed or refused to do respond.
25. During his appearance before the Commission, Judge Terrazas acknowledged that had been arrested and charged with Public Intoxication as alleged, but that his statement to the police officer suggesting that he was trying to use his judicial position to gain favorable treatment had been made in jest.
26. On November 21, 2013, at approximately 1:02 a.m., Judge Terrazas was arrested by a City of Pecos police officer for Driving While Intoxicated.
27. At the scene of the traffic stop, Judge Terrazas agreed to submit to a standard field sobriety test and a breath sample test.
28. Judge Terrazas failed the standard field sobriety test.
29. The results of the breath test were 0.147 and 0.144, almost twice the legal limit for intoxication.
30. On May 21, 2014, through a plea agreement with the special prosecutor assigned to the case, Judge Terrazas entered a guilty plea to the offense of Deadly Conduct, a Class A misdemeanor. He was placed on probation for six months, ordered to perform 100 hours of community service, and assessed a fine of \$500, plus court costs of \$375.
31. The Commission sent Judge Terrazas a written inquiry asking that he respond to the allegations concerning his November 21, 2013 arrest, but the judge failed or refused to respond.
32. During his appearance before the Commission, Judge Terrazas acknowledged that he had been arrested on November 21, 2013 for the offense of Driving While Intoxicated, entered a guilty plea on May 21, 2014 to a charge of Deadly Conduct, and was consequently placed on probation.
33. Judge Terrazas testified that he was on probation as of the date of his appearance before the Commission.

34. Judge Terrazas testified that he did not intentionally fail to cooperate with the Commission's investigation. Instead, because he was so busy performing his judicial duties, running his restaurant, and serving on CASA and the local school board, he simply forgot to provide a written response to the Commission's Letter of Inquiry.

RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides that any Texas judge may be disciplined for willful violation of the Code of Judicial Conduct, incompetence in performing the duties of office, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Section 33.001(b)(2) of the Texas Government Code provides that "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties includes ... willful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct."
3. Section 33.001(b)(5) of the Texas Government Code provides that "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties includes ... failure to cooperate with the Commission."
4. Canon 2A of the Texas Code of Judicial Conduct states, in relevant part, that: "A judge shall comply with the law."
5. Canon 3B(2) of the Texas Code of Judicial Conduct states, in relevant part, that: "A judge shall maintain professional competence in [the law]."
6. Section 27.005 of the Texas Government Code provides that "incompetency" includes the failure of a justice of the peace to obtain his or her required judicial education.

CONCLUSION

The Commission concludes from the evidence presented that by repeatedly failing to timely and successfully complete his judicial education hours in his first term in office, Judge Terrazas demonstrated incompetence in performing the duties of office, failed to comply with the law, and failed to maintain professional competence in the law, in willful violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, and Article V, Section 1-a(6)A of the Texas Constitution.

In addition, the Commission concludes that by pleading guilty to the offense of Deadly Conduct, Judge Terrazas failed to comply with the law and engaged in conduct that was clearly inconsistent with the proper performance of his duties as well as conduct that cast public discredit upon the judiciary and administration of justice. Likewise, as a public official and member of the judiciary, Judge Terrazas knew, or should have known, that his arrests for public intoxication and for driving while intoxicated would severely compromise the public's confidence in the integrity and impartiality of the judiciary, especially given the judge's testimony that he does preside over alcohol-related offenses in his court, magistrates defendants charged with alcohol-related offenses, and would like to be seen as a role model to the youth in his community. The Commission concludes that Judge Terrazas' actions in this regard

constituted willful and persistent violations of Canon 2A and Article V, Section 1-a(6)A of the Texas Constitution.

Finally, the Commission concludes that Judge Terrazas failure to cooperate with the Commission's investigation into all of the above-described incidents constituted willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and casts public discredit upon the judiciary and administration of justice, in violation of Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the conduct that violates Canons 2A and 3B(2) of the Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution recited above, it is the Commission's decision to issue a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Kristopher L. Terrazas, Justice of the Peace for Precinct 1, Place 1, in Pecos, Reeves County, Texas.

Pursuant to this Order, on or before **December 1, 2014**, Judge Terrazas must complete **thirty (30) hours** of judicial education and demonstrate that he is in compliance with his judicial education requirements for Fiscal Years 2013 and 2014. It is Judge Terrazas' responsibility to contact the Texas Justice Court Training Center, the Justice Court Judges Association, and/or any other entity that provides judicial education to justices of the peace, including a mentor judge approved by the Commission, to schedule and complete the additional education. The education hours may also be satisfied through the completion of webinars or other online education seminars made available from the Texas Justice Court Training Center or the State Bar of Texas.

Upon the completion of this training, Judge Terrazas is hereby directed to provide documentation from the entity or entities providing the judicial education certifying his completion of the additional education. In addition, Judge Terrazas shall sign and return the Respondent Judge Survey indicating compliance with this Order. These records shall be delivered to the Commission no later than **December 15, 2014**.

Failure to complete the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 21st day of August, 2014.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct